IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

MACA.No. 1353 of 2004()

OPMV.935/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD

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APPELLANT/RESPONDENT NO.2

RAMAKRISHNAN S/O. RAJAGOPALAN,
GEETHA HOTEL, PALLACHI ROAD,
KOZHINJAMPARA ROAD, PALAKKAD.

BY ADV. SRI.C.HARIKUMAR
SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENTS: PETITIONER & RESPONDENTS 1,3 & 4

1. KALYANI W/O. GOVINDAN,
ALAMPADY, KOZHINJAMPARA, PALAKKAD DISTRICT.

2. RAJAGOPALAN, GEETHA HOTEL,
POLLACHI ROAD, KOZHINJAMPARA ROAD, PALAKKAD.

3. THE NEW INDIA ASSURANCE CO.LTD.,
SREE VALLI BUILDINGS, ATHOKKODE, CHITTUR.

4. MANIKANDAN, S/O. RAJAGOPALAN,
GEETHA HOTEL, POLLACHI ROAD,
KOZHINJAMPARA ROAD, PALAKKAD.

R2 BY ADV. SRI.SAJU.S.A
R4 BY ADV. SRI.K.RAJESH KANNAN
R3 BY ADV. SMT.A.C.DEVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.21/2007 IN MACA.NO.1353/2004

DISMISSED

6/2/2007 Sd/- P.R.RAMAN, JUDGE.

P.R.RAMAN,J.

M.A.C.A.NO.1353 OF 2004

Dated this the 6th day of February, 2007

JUDGMENT

This is an appeal filed against the award of the Motor Accidents Claims Tribunal, Palakkad in O.P.(MV).No.935/96. The dispute centres round the question as to who was driving the vehicle in question at the time of accident. According to the claimant (lst respondent), the vehicle was driven by the 2nd respondent. But the Insurance Company took the plea that the vehicle was actually driven by one Manikandan, who was impleaded as supplemental 4th respondent in the claim petition. After evidence, the M.A.C.T. found based on the investigation report as well as on the charge sheet that the vehicle was driven by the 4th respondent, who did not have

valid licence at the time of accident. As such after the finding that the vehicle was driven negligently by the 4th respondent, the owner of the vehicle was made liable to compensate the amount awarded. The Insurance Company was exonerated as there was no valid insurance policy. This appeal is filed by the owner of the vehicle inter alia contending that the finding of the M.A.C.T. that the vehicle was driven by the 4th respondent is contrary to the evidence. In this connection it is submitted that the court below either could have acted based on the final judgment, produced as Ext.P4 in the case, or brushed aside the entire criminal case records rather than referring to investigation report and charge sheet alone for the purpose of entering the finding. Ext.B4 judgment was rendered by the criminal court wherein the 4th respondent

was acquitted from the charges, in the absence of any evidence to prove the identity of the person. If so, the impact of Ext.B4 judgment along with the investigation report and the F.I. statement could have been considered by the court below. The court below in this case merely referred to the investigation report and the charge sheet alone; but ultimately culminated in the acquittal of the 4th respondent. In that regard it can consider other evidence in this case as to who actually drove the vehicle. In the absence of any satisfactory evidence regarding these aspects of the matter and in view of the fact that Ext.B4 judgment was not referred to by the Tribunal, there has to be a fresh look into these matters. For that purpose, the matter is remanded for fresh consideration in accordance with law. It is open to the parties

to adduce additional evidence if any regarding the issue as to who drove the vehicle. The quantum of compensation as fixed by the Tribunal is sustained and no interference is called for.

2. Appeal is allowed limiting the question to enter a finding as to who actually drove the vehicle, after affording an opportunity of being heard to the parties.

The parties shall appear before the Tribunal on 07/03/2007.

P.R.RAMAN,
Judge.

kscv.